

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.**
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

SEP 29 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

In re the Marriage of:)	
)	
SCOTT KASSA,)	2 CA-CV 2009-0061
)	DEPARTMENT B
Petitioner/Appellant,)	
)	<u>MEMORANDUM DECISION</u>
and)	Not for Publication
)	Rule 28, Rules of Civil
KAZUMI KASSA,)	Appellate Procedure
)	
Respondent/Appellee.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. D20040576

Honorable Douglas P. Mitchell, Judge Pro Tempore

AFFIRMED

Aboud & Aboud, P.C.
By John Eli Aboud

Tucson
Attorneys for Petitioner/Appellant

Kazumi Kassa

Tucson
In Propria Persona

V Á S Q U E Z, Presiding Judge.

¶1 Scott Kassa appeals from the family court's post-dissolution ruling that he had failed to pay the full amount of a lump-sum spousal maintenance award to appellee, Kazumi Kassa, and that he owed child support and spousal maintenance arrearages. On appeal, Scott contends the evidence did not support the court's ruling and the court erred in allowing Kazumi additional time to submit documentation after the decree-enforcement hearing had concluded. Scott also argues the court erred in interpreting another court's ruling and by applying that ruling against him when he had not been a party to the previous action from which that ruling arose. For the reasons stated below, we affirm the court's ruling.

Factual and Procedural Background

¶2 The parties' marriage was dissolved by the family court's decree entered on December 14, 2006. The decree ordered Scott to pay Kazumi \$2,280 in spousal maintenance and \$820 in child support each month. It also required him to pay an additional lump-sum spousal maintenance amount of \$10,000 within thirty days of the decree, to assist Kazumi with the costs of moving out of a property owned by the couple during the marriage and located at Hampden Greenway in Vail, Arizona (the Hampden Greenway property). Kazumi was ordered to vacate the property within ninety days of the decree. Finally, the court ordered Scott to pay all mortgage payments, maintenance and repair costs, taxes, insurance, and utilities for the property until Kazumi and the children vacated the residence, at which point it would become his sole and separate property.

¶3 On July 20, 2007, Kazumi filed a “petition for order to appear re: enforcement of spousal maintenance and child support.” The family court found Scott had not been in arrears on child support, made no determination regarding spousal maintenance, and continued the hearing. In a subsequent under-advisement ruling, the court determined Scott in fact had overpaid child support and spousal maintenance through November 2007 in the amount of \$9,016.24. The court ordered the overpayment applied to the \$10,000 lump-sum obligation, leaving a balance of \$983.76.

¶4 On July 24, 2008, Kazumi filed another petition to enforce the decree claiming, among other things, that Scott had not paid the remaining \$983.76 owed on the lump sum and that he had not made the mortgage and utility payments on the Hampden Greenway property for the period from May 1, 2006, through December 14, 2006. Scott responded that he had paid the \$983.76, denied owing any amounts for the mortgage and utilities from May to December of 2006, and sought reimbursement for costs he had incurred on the sale of the property.

¶5 After a hearing in November 2008, the family court denied Scott’s claims for reimbursement. The court also determined he had not paid the remaining portion of the \$10,000 lump sum and was in arrears on his child support and spousal maintenance payments. It concluded Scott owed Kazumi a total of \$1,324.76 for those obligations through December 2008. The court also preliminarily denied Kazumi’s claim for reimbursement of mortgage and utility payments on the Hampden Greenway property, although it allowed her an additional thirty days to present proof she had made the

payments. Scott timely appealed the court's ruling.¹ We have jurisdiction pursuant to A.R.S §§ 12-120.21(A)(1) and 12-2101(B), (C).

Discussion

Spousal Maintenance and Child Support

¶6 Scott first contends the family court erred in finding that he had not paid the entire \$10,000 lump sum and that he owed arrearages for spousal maintenance and child support. We view the record in the light most favorable to upholding the court's decision, *Fought v. Fought*, 94 Ariz. 187, 188, 382 P.2d 667, 668 (1963), and will accept its findings of fact unless they are clearly erroneous, *Burnette v. Bender*, 184 Ariz. 301, 304, 908 P.2d 1086, 1089 (App. 1995). *See also McNutt v. McNutt*, 203 Ariz. 28, ¶ 6, 49 P.3d 300, 302 (App. 2002) (child support awards reviewed for abuse of discretion).

¶7 As the primary support for this argument, Scott relies on a computer printout from ATLAS II, the state-wide child support and spousal maintenance records-clearinghouse program, which he attached as an appendix to his opening brief. However,

¹After filing the notice of appeal from the January ruling, Scott obtained a stay of the appeal so the family court could regain jurisdiction to hear certain motions he intended to file. At the conclusion of those proceedings, jurisdiction revested in this court, and the records from those proceedings, which included two motions for reconsideration, were made a part of our record on appeal. However, Scott did not file a separate notice of appeal from those rulings; therefore, to the extent he is challenging the court's subsequent rulings on the motions for reconsideration, we lack jurisdiction to consider them. *See Lee v. Lee*, 133 Ariz. 118, 124, 649 P.2d 997, 1003 (App. 1982) (appellate court "acquires no jurisdiction to review matters not in the notice of appeal"; absent "timely notice of appeal following entry of the order sought to be appealed, we are without jurisdiction to determine the propriety of the order sought to be appealed") (citations omitted).

this document was not made part of the record in the proceeding below, and it appears to have been generated after the family court entered its January ruling. Therefore, because it is not a part of the appellate record, we do not consider it.² See *Lawless v. St. Paul Fire & Marine Ins. Co.*, 100 Ariz. 392, 393, 415 P.2d 97, 97 (1966) (appellate court does not look beyond record on appeal); *In re Estates of Spear*, 173 Ariz. 565, 567, 845 P.2d 491, 493 (App. 1992) (new exhibits may not be introduced on appeal).

¶8 Scott also relies on copies of two money orders, totaling \$983.76, to support his argument that he had paid the full lump-sum spousal-maintenance amount. Although the money orders demonstrate he paid \$983.76, nothing in the record suggests the family court failed to consider this evidence. Rather, it appears the court simply combined all payments he had made against the lump sum and monthly obligations for spousal maintenance and child support and calculated a total arrearage of \$1,324.76. Scott has provided no additional support for his contention that the court erroneously concluded he was in arrears, and we thus cannot say the court abused its discretion in making that determination. See *Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995) (appellate court assumes necessary items omitted from record support lower court's findings and conclusions).

²Another printout from ATLAS II was attached to Scott's first motion for reconsideration, filed after jurisdiction was revested in the family court. However, Scott does not refer to this document in his opening brief, and, in any event, standing alone, it does not contain sufficient information to permit us to determine whether the court's final calculation of arrearages constituted an abuse of its discretion.

Mortgage and Utility Payments

¶9 Scott next contends the family court erred in allowing Kazumi additional time to present evidence of mortgage and utility payments. During the November hearing, Kazumi testified that Scott had failed to make the mortgage and utility payments on the Hampden Greenway property as required by the decree and that ultimately she had made them. Scott argued she had failed to meet her burden of proof on this issue because she did not present supporting documentation. In its under-advisement ruling, the court preliminarily denied Kazumi's request for reimbursement of those payments but gave both parties an additional thirty days to submit supporting documentation on this issue.

¶10 Scott argues the court erred in granting Kazumi additional time to submit evidence because no post-trial motions had been filed relating to the issue, his due process rights were violated as a result, and Rule 65(C)(1), Ariz. R. Fam. Law P., does not allow for additional time under these circumstances. However, Scott did not object below to the court's order and filed his notice of appeal before the court had an opportunity to enter a ruling on the underlying reimbursement issue. The order permitting additional time to submit documentation is interlocutory and thus nonappealable. *Cook v. Cook*, 26 Ariz. App. 163, 165, 547 P.2d 15, 17 (1976) ("Generally, the law in Arizona . . . favors limiting the right of appeal to review of final decisions and not of interlocutory orders."); *see also* A.R.S. § 12-2101(B) (appeals may be taken generally from final judgment). Even assuming the order was appealable, the lower court first must be given the opportunity to consider an issue before it can be raised on appeal. *Hamm v. Y & M Enters. Inc.*, 157 Ariz. 336, 338, 757 P.2d 612, 614 (App.

1988) (“[E]rrors which are not called to the attention of the lower court will not be considered on appeal.”), *quoting U.S. States Treasury Dep’t v. Globe Corp.*, 113 Ariz. 44, 51, 546 P.2d 11, 18 (1976). We therefore decline to consider this argument further.

Sale of Hampden Greenway Property

¶11 Scott next contends the family court erred in denying his request for reimbursement of costs associated with the sale of the Hampden Greenway property. Pursuant to the divorce decree, Kazumi had ninety days to vacate the property after the effective date of the decree, and Scott was responsible for the mortgage and utility payments on the property during that time. Scott testified he was unaware that he was responsible for making the payments from May to December 2006, while Kazumi continued to live there. He stated that, when he became aware of the obligation, he could not afford to make the payments, so he decided to sell the property.

¶12 He also claimed he had incurred costs in preparing the property for sale because of the condition in which Kazumi and the children had left it. He ultimately sold the property to his mother, Beatrice Bolan, with a closing date after the ninety-day post-decree period Kazumi had been given to vacate the property. When Kazumi failed to vacate the property within the allotted time, Bolan initiated a forcible entry and detainer action (FED) in justice court. The justice court apparently granted the FED, and Kazumi appealed that decision to the superior court. Scott testified at the November enforcement hearing that he had made the mortgage payments from the filing of the FED until Kazumi finally moved out in December 2007, because he had been unable to deliver the property to his mother until that time.

¶13 In Kazumi's appeal of the FED, she maintained Scott lacked the authority to sell the property, and therefore, Bolan did not have a right to evict her. Kazumi asserted that the family court had given her permission to remain in the house after the decree was entered and that Scott had not yet paid the \$10,000 lump sum to assist with her moving expenses. The superior court vacated the justice court's ruling, concluding that, if Kazumi's assertions were correct, there would have been a cloud on the title that would have prevented Scott from selling the property and, in turn, would have precluded the justice court from exercising jurisdiction over the FED. Accordingly, the superior court ordered the FED appeal consolidated with the dissolution-enforcement proceedings.

¶14 After the two were consolidated, the family court ultimately determined that Scott had not paid the entire \$10,000 lump sum and, noting the superior court's ruling on the FED issue, also concluded Scott had lacked clear title to convey to his mother. On those grounds, the court denied Scott's claim for reimbursement of the amounts he had paid his mother due to Kazumi's continued occupancy of the property.

¶15 Without explanation, Scott contends the family court misinterpreted the superior court's ruling. He simply cites relevant portions of the family court's ruling followed by an excerpt from the superior court's ruling that omits the only relevant portion of that order. In any event, his contention is without merit. In its ruling in the FED appeal, the superior court essentially stated that, if Scott had not paid the lump sum, he would not have clear title to convey the property. The family court later found he had not paid the full \$10,000 and thus determined he did not have clear title to convey the property to his mother. The rulings of the two courts are in accord, and Scott does not

otherwise contend the family court erred in concluding his failure to pay the full \$10,000 constituted a cloud on the title to the property.

¶16 Scott nevertheless maintains that, even if the family court correctly interpreted the superior court's ruling, it wrongly applied that ruling against him under principles of res judicata and collateral estoppel because he was not a party to the FED action. However, because Scott did not raise this argument below, we do not consider it on appeal. *See Hamm*, 157 Ariz. at 338, 757 P.2d at 614.

Disposition

¶17 For the reasons stated above, we affirm the family court's ruling. And, because Scott is not the prevailing party on appeal, we deny his request for attorney fees and costs.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge